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TAGS: EINV ECON ENRG PGOV PREL MK

SUBJECT: AMBASSADOR DISCUSSES INVESTMENT BARRIERS AND ADVOCATES FOR U.S. FIRMS WITH DEPUTY PM STAVRESKI

Classified By: P/E MLATHAM REASONS 1.4(B) & (D)

Summary

¶1. (SBU) During a September 25 meeting with Deputy PM for Economic Affairs Zoran Stavreski, the Ambassador raised U.S. concerns regarding three outstanding investment issues: questions surrounding the GOM's decision on a recent power plant privatization, steps the GOM should take to ensure the personal safety of a U.S. citizen investor under attack by his Macedonian business partner, and an inexplicable delay in the GOM's decision on a mining exploration application by a prominent U.S.-based mining firm. Stavreski maintained that the only recourse open to the U.S.-Greek company that lost the power plant tender is to file a lawsuit against the GOM. He also said he would discuss with the Minister of Interior the safety of the U.S. investor, and explained that the GOM was waiting to pass a new mining law before awarding any new mining exploration licenses. His less-than-satisfactory answers demonstrate that the GOM still has much work ahead to create a fully transparent and investor-friendly business environment. End Summary.

Questions Raised on Power Plant Privatization

¶2. (SBU) The Ambassador requested a meeting with Deputy Prime Minister Stavreski to discuss outstanding U.S. investment issues, including a recent power plant privatization in which a U.S. company's joint venture offered the highest price but for less-than-clear reasons finished second. The GOM announced on July 31 the result of an international tender for the privatization of the "Negotino" electrical power plant and the construction of new electrical power generation. The winning bidder is a consortium of four companies, Hatch Acres (Canadian), Mott McDonald (UK), Unit Investment (Dutch), and Finance Engineering (Bulgarian). The second-ranked bid is a joint venture, SENCAP, between the Greek Public Power Corporation and a U.S. based investment fund, ContourGlobal. SENCAP questioned the GOM's evaluation of the bids and filed an appeal with the GOM.

¶3. (SBU) ContourGlobal executives met with the Ambassador on August 7 to explain their concerns with the bid evaluation. Specifically, ContourGlobal questioned how the GOM had evaluated the business plans, worth ten points out of a total of 100. The winning bid received a perfect ten, while SENCAP received a 3.8 score. There was less than one point difference between the two bids' total scores. ContourGlobal also pointed out that in the official minutes of the opening of the bids, part of the winning bidders' electrical generation capacity was described as "optional," yet the GOM

included this "optional" capacity in calculating the winners' total score.

¶ 14. (SBU) The Ambassador received assurances from the GOM on August 8 that the GOM would not sign an agreement with the winning bidder until after the completion of the appeal process. Subsequently, Stavreski stated publicly that there was no administrative appeal process, and that SENCAP's only option was to file a law suit. Emboffs repeatedly requested a meeting with GOM officials to discuss the evaluation of the bids, resulting in the Ambassador's September 25 meeting with Stavreski.

¶ 15. (C) Sources have told us that the Bulgarian company, Finance Engineering, has close ties to an unspecified Russian energy company, and may in fact be a front for a Russian company. We do not know the original source or reliability of this information. Finance Engineering's Executive Director, Genady Tabakov, claims that his company is majority owned by a U.S. company, Traders International. Embassy Sofia's FBI legatt informed us recently that her office has begun a money laundering investigation on suspicious financial transactions involving Finance Engineering and Traders International. We are not, however, authorized to disclose this to the GOM.

¶ 16. (C) The Macedonian media has speculated over the past few weeks on the true nature of the winning consortium, including speculation on whether Hatch's role is to provide an appealing "face" or front for other members of the consortium. Minister of Economy Vera Rafajlovska had been tapped by the GOM to sign the agreement with the winning consortium, but the media reported she was hesitant to sign it. The Ambassador recently mentioned to Rafajlovska that the embassy still had several unanswered questions on the bid

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decision. Subsequently, Rafajlovska told the media that she would not sign an agreement with the winning consortium until she received additional documentation from the companies in the consortium. Those companies said they would provide the GOM with the documentation requested by mid-October.

Privatization: No Specific Legal Requirements, No Appeal

¶ 17. (SBU) In the September 25 meeting, the Ambassador asked Stavreski to explain the evaluation process used in the Negotino privatization, and to respond to the questions raised by SENCAP. Stavreski said that the GOM evaluated the business plans on several criteria, and that the winning consortium had provided a much more detailed and comprehensive document than the one submitted by SENCAP, hence the scores of 10 and 3.8 respectively. Regarding the "optional" generation capacity, Stavreski said that it was not really optional. The winning consortium's bid committed to providing this additional capacity if the GOM would provide the natural gas pipeline infrastructure. He added that the GOM plans at some point to provide gas, therefore, according to Stavreski, this additional capacity was not actually optional.

¶ 18. (SBU) The Ambassador asked why there was no possibility of an administrative appeal of the GOM's decision. Stavreski said that he had agreed initially to the Ambassador's request to postpone signing an agreement until after an appeal process because he had believed an administrative appeal was feasible. However, the GOM's legal experts subsequently told him no such appeal was possible and there is no appeal, only legal recourse, in the case of a privatization decision. He explained that SENCAP had filed its appeal under GOM's procurement law, but that since the process was a privatization, the procurement appeal process did not apply. Stavreski asserted further that because it was not a procurement, but a privatization, there were no specific legal rules the tender commission was required to follow in evaluating the bids.

¶9. (SBU) Stavreski also stated that the government (i.e., the Prime Minister and his cabinet) had issued the tender decision and that there was no administrative process to appeal such government decisions. Stavreski concluded that SENCAP's only option now was to file a legal suit against the GOM. The Ambassador thanked Stavreski for the information, but warned that a privatization with mandatory "optional" elements, no specific legal requirements or possibility of administrative appeal was likely to raise additional questions internationally.

¶10. (SBU) Another GOM official had earlier confidentially informed us that the tender falls under the 2004 law for the privatization of the GOM's electrical system assets. That law states that the privatization process should be "based on the principles of transparency, nondiscrimination, objectivity, and in accordance with market conditions," but the law includes no administrative mechanism to enforce these principles. SENCAP filed a lawsuit in Macedonian court on September 25 requesting that the GOM's decision be overturned.

¶11. (SBU) We have discussed our concerns regarding the Negotino power plant privatization process with local representatives of EBRD and the EU Commission. In August, EBRD sent a letter to Stavreski requesting more information on the tender, but has still not received a response. EBRD is continuing to press Stavreski and Prime Minister Gruevski for a meeting to discuss the tender. EU Commission First Counselor Joan Pearce told us that she had received the same explanation of the tender process from Stavreski.

Protecting AmCit Investor's Safety

¶12. (SBU) The Ambassador also raised with Stavreski the case of a U.S. citizen, Albert Hicks, who invested in a Macedonian company and subsequently became embroiled in a legal case against his former Macedonian business partner. Hicks had informed emboffs that strangers, who he assumed were hired by his former partner, had approached him and told him to drop the case, "or else." The Ambassador sent a letter on July 30 to Stavreski and Minister of Interior Jankulovska requesting that the GOM ensure Hicks' safety. On September 11 after he left a court hearing, Hicks was attacked by two men wielding metal chains causing scratches and bruises on his head and shoulders. The Ambassador sent another letter to Stavreski and Jankulovska requesting again that the GOM ensure Hicks

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safety, and also requesting the GOM fully investigate the attack. The RSO made the same points in a later meeting with MOI officials.

¶13. (SBU) Stavreski told the Ambassador that he saw no reason to be involved as this was not related to his portfolio of economic and investment matters, but that he had discussed the case with Jankulovska, and that he would talk with her again to ensure that the MOI followed up. The Ambassador noted that Hicks' individual safety was of primary concern for the USG. Additionally, we saw a very direct connection to investment in Macedonia as such an attack on a U.S. investor could also undermine the government's attempt to strengthen Macedonia's image as a desirable investment location.

Phelps-Dodge's Long Wait For An Exploration License

¶14. (SBU) The Ambassador also asked Stavreski about a long delay in the GOM's response to the U.S. mining company Phelps-Dodge's request for an exploration license. Phelps-Dodge submitted an application for a license to conduct exploratory drilling in a specific geographical location in March 2006, but has received no official response from the GOM to date. Embassy econoff had met with Stavreski's staff in June and requested that the GOM respond to Phelps-Dodge's application, but action had not been forthcoming.

¶15. (SBU) Stavreski said that the GOM was not satisfied with the current process of granting such exploration licenses, so in a draft law on mining the GOM has included a new tender process for granting the licenses. Until parliament passes that draft law, Stavreski said, the GOM would not grant licenses to any mining company. Apparently, it was not felt necessary to inform applicants and respond to inquiries.

Comment - Answers, But Not Satisfactory

¶16. (C) Stavreski's attitudes and his answers to the issues the Ambassador raised were very disappointing, particularly given the GOM's desire to attract foreign direct investment. The discussion demonstrated that the GOM still has far to go in creating an efficient and transparent business environment, despite the GOM's attempts to market Macedonia as an investment "heaven." The Ambassador warned Stavreski that our next update of the Investment Climate Statement for Macedonia may have to reflect U.S. investors' multiple negative experiences here over the past few months. How the GOM treats existing investors, and potential investors such as SENCAP, will have a significant impact on its ability to lure new investors to Macedonia.

MILOVANOVIC